In the Court of Appeal of Alberta

Citation: R v Sharif, 2026 ABCA 250

Date: 20260727
Docket: 2601-0156A
Registry: Calgary

Between:

His Majesty the King

Respondent

\- and -

Mahir Yahya Sharif

Applicant

Restriction on Publication

Identification Ban – See the *Criminal Code*, section 486.4.

By Court Order, information that could identify the victim or the witness must not be published, broadcast, or transmitted in any way.

NOTE: Identifying information has been removed from this judgment to comply with the ban so that it may be published.

Reasons for Decision of
The Honourable Justice Kevin Feth

Application for Extend Time to Appeal

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[1] Mahir Sharif applies to extend the time to appeal convictions which were entered after he pled guilty to various offences including trafficking methamphetamine and fentanyl, and sexual assault.

[2] The Alberta Crown opposes Mr Sharif's application. The Federal Crown takes no position on the application and did not make written or oral submissions.

[3] The extension is granted.

Background

[4] The guilty pleas were entered in August 2022, and pursuant to a joint submission the applicant was sentenced to 3 years imprisonment. He has served that sentence in full.

[5] The applicant was a permanent resident at the time of his convictions, having been admitted into Canada though the refugee settlement program in 2019 at the age of 19. He and his family were declared Convention refugees by the United Nations in 2013 based on race-based attacks in Somalia, where his parents were born. At that time, the applicant and his family were living in a refugee camp in Egypt.

[6] The applicant was born in Saudi Arabia in 1999, after his parents initially fled there from Somalia, and his first language is Arabic. He does not speak Somali. The applicant has a history of schizophrenia, aggravated by substance use that apparently started after coming to Canada.

[7] Immigration proceedings leading to deportation were initiated against the applicant in 2024 because of his convictions, and he has since been found inadmissible to remain in Canada on grounds of serious criminality under s 36 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *Act*), which provides:

> **Serious criminality**
>
> **36 (1)** A permanent resident or a foreign national is inadmissible on grounds of serious criminality for
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> **(a)** having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed. . . .

Under s 64 of the *Act*, there is no right to appeal a finding of inadmissibility based on serious criminality. Similarly, while a person who is recognized as a Convention refugee may not be returned to a country where they would be at risk of persecution, torture or cruel and unusual treatment or punishment, that "protection" does not apply where a person "is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister [of Immigration and Citizenship], a danger to the public in Canada": ss 115(1) and (2)(a) of the *Act*.

[8] In his affidavit before this Court, the applicant states that following a breach of his parole, he was returned to custody in late 2024 and ultimately placed in the Regional Psychiatric Centre in Saskatchewan. In early 2025, he was visited by an immigration officer twice and provided with voluminous immigration documents, all in English, but "did not understand what the immigration proceedings were". He was told to respond by April 2025. Shortly afterwards, the applicant came to understand that he had "lost" his residency and was transferred to Ontario into the custody of Canada Border Services to await deportation on June 30, 2025. He was told that Somalia had informed Canadian officials that he would not be accepted into the country, so he was to be deported to Nairobi, Kenya where he would be left to make his own way to Somalia.

[9] Through the intervention of an immigration lawyer, the applicant filed an application in the Federal Court for leave and for judicial review of the Danger Opinion which led to the removal order. At the same time, the applicant filed a complaint with the United Nations Human Rights Committee which requested that Canada suspend his removal pending consideration of the complaint. When the Minister refused the request without providing reasons, the applicant brought an application for judicial review of the Minister's decision; that application was dismissed by an application judge who found the Minister was not required to give reasons. The applicant appealed to the Ontario Court of Appeal.

[10] In the fall of 2025, the applicant began the process of attempting to secure counsel to pursue a late appeal of his convictions. Delay ensued after Legal Aid Ontario denied him coverage. His brother then attempted to retain counsel in Alberta to file a conviction appeal, but that led to various delays and notices of appeal being filed with the wrong court.

[11] This application to extend the time to appeal was finally filed on May 21, 2026. The primary argument is that at time of his guilty pleas, the applicant did not understand the collateral consequences of those pleas, including that his convictions and sentence would make him inadmissible in Canada and lead to his deportation with no ability to appeal under the *Act*.

[12] Specifically, the applicant provides in his affidavit:

> 23. My lawyer told me that if I did not plead guilty to the various charges I was facing and tried to defend myself, I would spend more time in jail.

> 24. My lawyer also told me that I likely would not be deported after pleading guilty because the charges were not serious.
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> 25. My lawyer did not tell me that I should get an independent legal opinion about the impact of the proposed pleas from an immigration lawyer.
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> 26. I pled guilty to the charges on 25 August 2022. I was not physically present in the courtroom but appeared remotely from prison. There was no Arabic interpreter in the court that day.
>
> 27. When I pled guilty to the charges, I did not know that a conviction for sexual assault or a sentence of more than six months would make me inadmissible in Canada and subject to deportation. I also did not know that if I was ordered removed by immigration officials, I would not be able to appeal that decision because I was a permanent resident and not a citizen.
>
> 28. If I had been aware that pleading guilty could lead to deportation, I would not have pled guilty and I would have instead proceeded to trial.
>
> 29. At the time I pled guilty, I was terrified of being sent to Somalia. I believed I would be imprisoned in Somalia because I am unable to speak Somali and have no connections in that country. I believed I would be killed in Somalia due to my clan. I still believe this is the case.

[13] No affidavit has been filed as part of this application from the applicant's lawyer at the time of his guilty pleas. However, the transcript of the sentencing hearing confirms the applicant's lawyer told the court that s 606 of the *Criminal Code* was satisfactorily canvassed. The transcript also provides that the sentencing judge asked about immigration consequences. The applicant's lawyer responded as follows:

> [Counsel]: Your Honour, I had discussed that with him. Obviously, I'm not the final say on that. He is aware that there's a chance that he could face -- go before a board to face whether or not he will be deported. My understanding of it is [ ] that because he has refugee status, therefore permanent residency, <u>any removal order is not likely to proceed</u>, but I obviously don't have the final say on that and that's something to be determined later, but he is aware of that. I have discussed that with him as well, and <u>he realizes that there is that possibility out there, but his refugee status and permanent residency likely protects him</u>, to some degree, on that. [Emphasis added]

[14] The sentencing judge seemed to accept this answer, stating “Okay”, and did not revisit the matter in questioning the applicant following counsels’ submissions. The judge questioned the applicant about how he became a refugee and how long he had been in Canada:

> THE COURT: . . .Okay. And tell me. How did you come to be a refugee? What happened? How did you get to Canada?
>
> THE ACCUSED: I come because I'm in Egypt. . . I apply. I come refugee, because is not -- I see a . . .better life in Canada.
>
> THE COURT: Okay, but usually you could immigrate, but you could also be a refugee. Was it the case that you could not live in Egypt?
>
> THE ACCUSED: Yeah. I think I live in Egypt.
>
> . . .
>
> THE COURT: And how long have you been in Canada?
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> THE ACCUSED: In Canada, right now four years.
>
> THE COURT: Four years. okay. And what would your plan be when you get out of jail?
>
> THE ACCUSED: I focus for a job and school.
>
> THE COURT: Right. And then you will have a baby. [S]o you have to support the baby, right?
>
> THE ACCUSED: Yeah.

[15] The convictions in this matter involved serious offences, including multiple instances in trafficking large amounts of methamphetamine and fentanyl to undercover police officers. The sexual assault involved digital penetration of the complainant’s vagina for a period of 10 minutes, while both the applicant and the complainant were patients in a psychiatric care facility. The applicant also pled guilty to taxi fraud, theft under $5000.00 and mischief. On all but the trafficking offences, the Crown proceeded summarily. The sentencing judge accepted the joint submission and imposed 3 years imprisonment.

[16] An affidavit filed with this Court and sworn by the applicant’s immigration lawyer, Jessica Chandrashekar, attached a copy of a report from the Regional Psychiatric Centre dated May 7, 2025, confirming the applicant has been diagnosed with schizophrenia, aggravated by substance

use. That diagnosis was further confirmed in a second psychiatric report dated July 2025 which noted "significant concerns about the [applicant's] cognitive impairment".

[17] Also attached to Ms Chandrashekar's affidavit was the "Determination Pursuant to Paragraph 115(2)(a)" of the *Act*", or Danger Opinion, reached by a delegate of the Minister and dated May 13, 2025. The opinion found the applicant to be inadmissible in Canada: "Mr. Sharif's criminal activities were both serious and dangerous to the public, in addition to the lack of evidence of rehabilitation and the difficulty following rules, I have reasonable ground to believe that Mr. Sharif represents a present and future danger to the Canadian public, whose presence in Canada poses an unacceptable risk." The report writer found a "less than reasonable chance" that the applicant would be at risk if returned to Somalia, and that any humanitarian and compassionate considerations for his continued residency in Canada were outweighed by the danger he posed to the public.

[18] On May 15, 2026, the Federal Court dismissed the applicant's application for leave and for judicial review of the Danger Opinion. No appeal lies from that decision: s 72(2) of the *Act*.

[19] On July 2, 2026, the Ontario Court of Appeal dismissed the applicant's appeal of the application judge's decision refusing judicial review of the Minister's decision. In doing so, the Court pointed to the binding nature of ***Suresh v Canada (Minister of Citizenship and Immigration)***, 2002 SCC 1, [2002] 1 SCR 3 [***Suresh***] on the issue of *refoulement*. In its decision, the Court found that "Mr. Sharif was suffering serious mental health issues and was involuntarily hospitalized for much of the Danger Opinion process. He was unrepresented and did not understand English well enough to be able to respond." The Court was otherwise critical of the Danger Opinion, which contained "only one paragraph which directly addresses Mr. Sharif's mental health" (paragraph 27):

> [30] The Danger Opinion did not address: (a) the seriousness of Mr. Sharif's mental health condition and how those with mental health issues are treated in Somalia; (b) whether Somalia would allow his re-entry as CBSA internal notes indicate that Somalia does not allow for the return of anyone with a diagnosed mental health issue; (c) Somalia's corresponding refusal to issue him travel documents; (d) the CBSA's decision not to accompany him to Somalia, contrary to CBSA policy, and (e) evidence about Al-Shabaab posing a significant and growing security risk in Mogadishu contrary to the author's conclusion that the group has not had a presence in Mogadishu in over a decade and poses minimal risk.
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> [31] Moreover, while the Danger Opinion noted that "[n]o submissions in response to the notice [of January 8, 2025] have been received" from Mr. Sharif, it did not consider that Mr. Sharif was involuntarily held in a mental health institution, had no legal counsel, and did not speak English well enough to respond.

[20] Despite dismissing the appeal, the Ontario Court of Appeal remained concerned about the applicant's deportation and specifically questioned whether ***Suresh*** needs to be revisited by the Supreme Court of Canada:

> [140] The decision to remove Mr. Sharif given his mental health condition and concomitant needs is harsh. <u>There is no dispute that Mr. Sharif was an involuntary patient in a mental hospital at the time he committed the index [sexual assault] offence.</u> No evidence was proffered as to the circumstances surrounding his decision to plead guilty. Moreover, he is seriously ill and will require significant long-term care. Somalia has refused to issue him travel documents. The CBSA will not accompany him to Somalia, contrary to CBSA policy, and there is some evidence that the Al-Shabaab militia has considered that people deported from Western countries may be spies and sometimes execute them based on this suspicion. His removal may well result in serious risks to his safety.
>
> [141] *Suresh* has been criticized by other apex courts and by the UN itself for permitting exceptions to rights which international law holds to be absolute: *Attorney-General v. Zaoui*, [2005] N.Z.S.C. 38, at para. 40.
>
> [142] Canada's Supreme Court has also recently reiterated that the principle against *refoulement is* "the cornerstone of the international refugee protection regime" though without overturning *Suresh*: *Mason*, at para. 108, per Jamal J. Similarly, Abella J. held in *Nevsun*, at para. 103, that "the prohibition against cruel, inhuman, and degrading treatment has been described as an 'absolute right'" which "no social goal or emergency can limit".
>
> [143] More recently, in *Canadian Council for Refugees*, at para. 2, Kasirer J. described *non-refoulement* obligations as ones "which prohibit directly or indirectly returning a person to a place where they would face certain kinds of irreparable harm, including threats to their life or freedom, torture and cruel or degrading treatment" and called them "the cornerstone of the international refugee protection regime". He went on to reason, at para. 164, that "If administrative malfeasance results in returning individuals to circumstances that would shock the conscience of Canadians, such as returning individuals to face a real and not speculative risk of *refoulement*, constitutional and administrative remedies remain available" and "that administrative decisions in this area call for the most anxious scrutiny".
>
> [144] Notwithstanding these comments, *Suresh* remains binding authority, subject to the Supreme Court's decision to revisit it.

> [145] For these reasons, a decision to remove a refugee in accordance with a Danger Opinion provided under s. 115(2) is not necessarily inconsistent with the principle of *non-refoulement* as it is construed in domestic law. Consequently, Canada's decision not to hold Mr. Sharif's refugee removal order in abeyance while his communication to the UNHRC was under consideration, is not an unreasonable exercise of its discretion as the law presently stands. [Emphasis added]

[21] A further 60-day stay of the applicant's removal was ordered from the date of the decision of the Ontario Court of Appeal, presumably to facilitate a possible leave to appeal application to the Supreme Court of Canada. The applicant intends to apply for leave.

Test for an extension of time to appeal

[22] Section 678(2) of the *Criminal Code* allows for an extension to time to appeal convictions. The criteria for granting an extension are set down in ***Cairns v Cairns***, 1931 CanLII 471 (AB SCAD), [1931] 4 DLR 819 at 826-7, and include:

(a) a *bona fide* intention to appeal held while the right to appeal existed;

(b) an explanation for the failure to appeal in time that serves to excuse or justify the lateness;

(c) an absence of serious prejudice such that it would not be unjust to disturb the judgment;

(d) the applicant must not have taken the benefits of the judgment under appeal; and

(e) a reasonable chance of success on the appeal, which might better be described as a reasonably arguable appeal.

[23] "These factors guide the Court in exercising its discretion to extend the time to appeal, but they do not set rigid requirements, and they do not override the Court's general discretion to extend time in appropriate cases: ***Cairns*** at p. 829; ***Stoddard v Montague***, 2006 ABCA 109 at para. 8, 412 AR 88": ***R v Canto***, 2015 ABCA 306 at para 13; ***Miller-Tait v Miller-Tait***, 2024 ABCA 263 at paras 8-9 [***Miller-Tait***]. "An applicant who fails to establish one or more of the factors can still receive an extension, if there are 'unique and special circumstances' and it is in the interests of justice to grant the extension": ***Miller-Tait*** at para 9.

Analysis

[24] The applicant submits that given his unique circumstances, it is in the interests of justice for this Court to grant an extension of time to allow him to file an appeal of his convictions. He

asserts that he was not told and did not understand that his pleas would automatically trigger immigration consequences and ultimately his deportation under the *Act*. To foreclose an appeal means he will suffer the "unduly punitive effect" of removal from Canada based on guilty pleas that would not have been entered had he been properly informed, and deportation to a dangerous country he does not know and that does not want him.

[25] In my view, the interests of justice favour an extension of time to file a Notice of Appeal to appeal his convictions. The applicant has satisfied most of the factors for an extension of time, and to the extent he has not, I conclude that unique and special circumstances exist such that the extension should be granted.

[26] First, while the applicant did not have a *bona fide* intention to appeal while the right to appeal existed, the evidence in both his affidavit and the transcript of the sentencing hearing support his argument that he was unaware of the full extent of his susceptibility to deportation at the relevant time. In particular, he was apparently misinformed about an improbable risk of deportation and an opportunity to be fully heard on appeal before a final deportation decision was made. The collateral consequences of the guilty pleas were seemingly unknown during the appeal period.

[27] Second, I accept that his explanation for failing to appeal in time provides a reasonable justification for his lateness, and that when the "information gap" came full circle in May 2025 after being informed of his deportation, the applicant's intention to appeal crystallized. I find that he then acted "reasonably promptly" having regard for the constraints imposed by his incarceration, mental health, and lack of counsel.

[28] The third and fourth factors address whether there is an absence of serious prejudice to the respondent Crown such that it would not be unjust to disturb the judgment, and whether the applicant has taken any benefit as a result of the judgment. The applicant has served the sentence imposed in full. There is no prejudice to the Crown or benefit to the applicant in this respect, and the "applicant acted immediately upon learning of the consequences of his [guilty pleas and] sentence, and no additional delay occurred after that point": ***R v Truong***, 2007 ABCA 127 at para 12 [***Truong***].

[29] The Alberta Crown submits however, that it would suffer serious prejudice if new trials resulted from a successful appeal, particularly in relation to the sexual assault conviction. But there is no evidence before me to support this argument. While it has been four years since the applicant's guilty pleas, that does not mean the prosecution would be compromised. Nothing in the record suggests witnesses are unavailable or that trial evidence has been lost or diminished. Moreover, where the Danger Opinion was predicated on the sexual assault conviction, any concerns about future prosecution must give way if the interests of justice require a panel of this Court to consider whether his pleas should be struck.

[30] I have also considered whether the applicant has received a collateral benefit by using a late conviction appeal to delay his deportation. Again, no evidence is before me suggesting the applicant had the intent to delay his appeal to remain in Canada. Notably, the reason for the delay of his deportation thus far has been the various aspects of his immigration case being litigated in Ontario.

[31] The fifth consideration is whether the applicant has a reasonably arguable appeal. The threshold is a low and I need only be persuaded that the appeal is arguable or has "some merit": ***Balisky v Balisky***, 2019 ABCA 404 at para 26.

[32] The applicant argues that being misinformed about the risk of deportation and an opportunity to be heard through an appeal exposed him to unanticipated collateral consequences, which were not considered in making his decision to enter guilty pleas. This basis for an arguable appeal was addressed in ***Truong*** at paragraph 11: "Where the immigration effects of a sentence are unknown or unappreciated until after sentencing, appellate courts have intervened to vary the sentence, even in circumstances where the original sentence was not manifestly wrong". Similarly, judicial intervention may result from an uninformed guilty plea. As the Supreme Court of Canada held in ***R v Wong***, 2018 SCC 25 at paras 3-6, [2018] 1 SCR 696 [***Wong***], while the plea resolution process is critical to our justice system and society maintains a strong interest in finality, "[c]onversely, the finality of a guilty plea also requires that such a plea be voluntary, unequivocal and informed. And to be informed, the accused 'must be aware of the nature of the allegations made against him, the effect of his plea, and the consequence of his plea' (*R. v. T. (R.)* (1992), 1992 CanLII 2834 (ON CA), 10 O.R. (3d) 514 (C.A.), at p. 519)." This includes the legally relevant collateral consequences of pleading guilty. "Immigration consequences bear on sufficiently serious legal interests to constitute legally relevant consequences": ***Wong*** at para 4. As in ***Wong***, if those consequences were unknown, the applicant's pleas may be uninformed.

[33] The Alberta Crown submits the applicant was aware of some risk of deportation, even if he was misled about the magnitude of that risk, so the collateral consequences were known. However, I agree with the applicant that an arguable issue arises as to whether he was significantly misled about the gravity of his jeopardy and access to an appeal. In ***R v Pineda***, 2019 ONCA 935, the appellant was told that his guilty plea could have "serious immigration consequences" but was not told about the "specifics" including that he could be deported without a right of appeal. The Ontario Court of Appeal set aside the pleas of guilty and consequent convictions because the appellant did not know "the serious jeopardy he was in" (paragraph 10). Assessing the implications of a plea might demand some appreciation of both the nature of the possible outcomes and the likelihood they might materialize.

[34] Whether this Court will choose to intervene on a full appeal is not for me to say, as that is a determination to be made by a panel in keeping with the guidance provided in ***Wong***. However, I find that the applicant has met the burden of establishing his appeal has some prospect of success.

Conclusion

[35] Considering all the factors, the application to extend time to appeal is granted.

Application heard on July 22, 2026

Reasons filed at Calgary, Alberta
this 27th day of July, 2026

Feth J.A.

Appearances:

S.L. Tkatch, KC (no appearance)
S. Clive
for the Respondent

M.A. Stephens
N.D. Abraham
for the Applicant